

HESSEQUA MUNICIPALITY

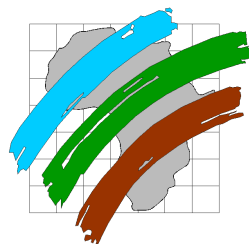
REMAINDER PORTION 9 OF THE FARM VERMAAKLIKHEID NO. 499, DIVISION RIVERSDALE (VERMAAKLIKHEID)

APPLICATION FOR:

Consent Use and a Building Line Departures

APPLICANT:

NuPLAN AFRICA



PROJECT DETAIL

APPLICANT: NuPlan Africa Town Planners
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PROJECT REFERENCE: C3.028

DATE: 15 September 2022

APPLICATION PARTICULARS

APPLICATION FOR:

- **Consent Use** to allow Tourist accommodation on the subject property, as per surveyed Site Development Plan attached as **PLAN 4**, in terms of Section 15(2)(o) of the Hessequa Municipal Planning By-law 2015.
- **Permanent Departure** of the southern boundary building line from 30m to 11.19m, to allow for the existing building, in terms of Section 15(2)(b) of the Hessequa Municipal Planning By-law 2015.
- **Permanent Departure** of the western boundary building line from 30m to 11.92m, to allow for the existing wooden deck, in terms of Section 15(2)(b) of the Hessequa Municipal Planning By-law 2015.

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1. INTRODUCTION

Nuplan Africa Town Planners has been appointed by the subject property owner, to lodge a Consent Use and Building line departure application for the Tourist accommodation on the subject property, named *Thorn and Feather*, Remainder Portion 9 of the Farm Vermaaklikheid No. 499, currently zoned Agricultural I. As background:

- The farm is owned by three shareholders each having a one third undivided share in the farm. Refer to Usage Agreement Plan attached as **PLAN 2** indicating the portions of each shareholder.
- This application is only pertaining to the one third share held by Mr. Jonathan Gersh indicated on **PLAN 2** as Portion A (+/-79ha).
- In 2013 Mr. Gersh had building plans approved by Hessequa Municipality for a residential dwelling. Refer to approved Site Plan attached as **PLAN 3**.
- In December 2015 Mr. Gersh started to rent out the property for short term self-catering tourist accommodation, on Airbnb and other online platforms.
- He decided to do this because he does not live on the farm full time and he observed surrounding properties running successful holiday rental operations, he saw this as an opportunity to earn an additional income to help maintain the farm and employ full time employees.
- He was unfortunately not aware of the Bylaw regulations and that land use rights needed to be applied for to rent the property for self-catering accommodation on a farm, because in a town or city, residential homes can be rented out on Airbnb with no need for a land use application.
- The purpose of this application is therefor to apply for land use approval to regulate this.
- Furthermore, when the residential dwelling was constructed, the position of the buildings had to be identified on site due to the topography, steep terrain and existing trees. Regrettably, the 30m building line on the southern and western farm boundaries was not maintained and was done erroneously and not intentional. This application is submitted to rectify the encroachment.

In order to regulate the above mentioned, the following applications are required:

- **Consent Use** to allow Tourist accommodation on the subject property, as per surveyed Site Development Plan attached as **PLAN 4**, in terms of Section 15(2)(o) of the Hessequa Municipal Planning By-law 2015.
- **Permanent Departure** of the southern boundary building line from 30m to 11.19m, to allow for the existing building, in terms of Section 15(2)(b) of the Hessequa Municipal Planning By-law 2015.
- **Permanent Departure** of the western boundary building line from 30m to 11.92m, to allow for the existing wooden deck, in terms of Section 15(2)(b) of the Hessequa Municipal Planning By-law 2015.

Section 3 and **5** of this report contain more detail and motivation on the application.

The following in respect to the application is attached to this report:

- **ANNEXURE 1:** Land Use Application form.
- **ANNEXURE 2:** Pre-application minutes.
- **ANNEXURE 3:** Proof of payment of the application fees.

2. PROPERTY DETAILS

The subject property is located to the south of the town of Vermaaklikheid and to the north of Puntjie, adjacent to the Duivenhoks River. Access to the farm is from a gravel road (Minor Road 4801) that branches from Divisional Road 1524 to Riversdale / Stilbaai. Refer to **Figure 1** and **PLAN 1**.

Refer to Usage Agreement Plan attached as **PLAN 2** indicating the portions of each shareholder. The description of the subject property is outlined in Table 1 below:

Table 1: PROPERTY DESCRIPTION

Property description	Remainder Portion 9 of the Farm Vermaaklikheid No. 499
Extent of Entire Property	220,1039ha
Extent of Portion A	+/-79ha (refer to PLAN 2)
Current zoning	Agriculture I
Current land use	A small portion (adjacent to the river) of the one third share being held by Mr. Gersh (Portion A) is currently being used for self-catering holiday accommodation, the rest of Portion A is vacant rural land.
Title deed number	T058086/2009
Ownership	Mr. Jonathan Gersh (Portion A: One-third share)

The following in respect to the property is attached to this report:

- **ANNEXURE 4:** Deed of Transfer (T058086/2009) for one-third share in the property held by Mr. Jonathan Gersh.
- **ANNEXURE 5:** Deed of Transfer (T57128/1991) for one-third share in the property held by Vermaaklikheid Holiday Accommodation CC.
- **ANNEXURE 6:** Deed of Transfer (T38769/1976) for one-third share in the property held by Mr. Alfred Carl Nothnagel
- **ANNEXURE 7:** Power of attorney from Mr. Jonathan Gersh to NuPlan Africa to lodge the application.
- **ANNEXURE 8:** Power of attorney from Vermaaklikheid Holiday Accommodation CC to NuPlan Africa to lodge the application on behalf of Mr. Jonathan Gersh.
- **ANNEXURE 9:** Company Resolution from Vermaaklikheid Holiday Accommodation CC.
- **ANNEXURE 10:** Permission from Vermaaklikheid Holiday Accommodation to Mr. Jonathan Gersh for the tourist accommodation.
- **ANNEXURE 11:** Sworn affidavit from Mr. Jonathan Gersh regarding the inability to obtain signed documents from the one shareholder Mr. Alfred Carl Nothnagel
- **ANNEXURE 12:** Conveyance Certificate which confirms that there are no restrictive title conditions which prohibits the application.

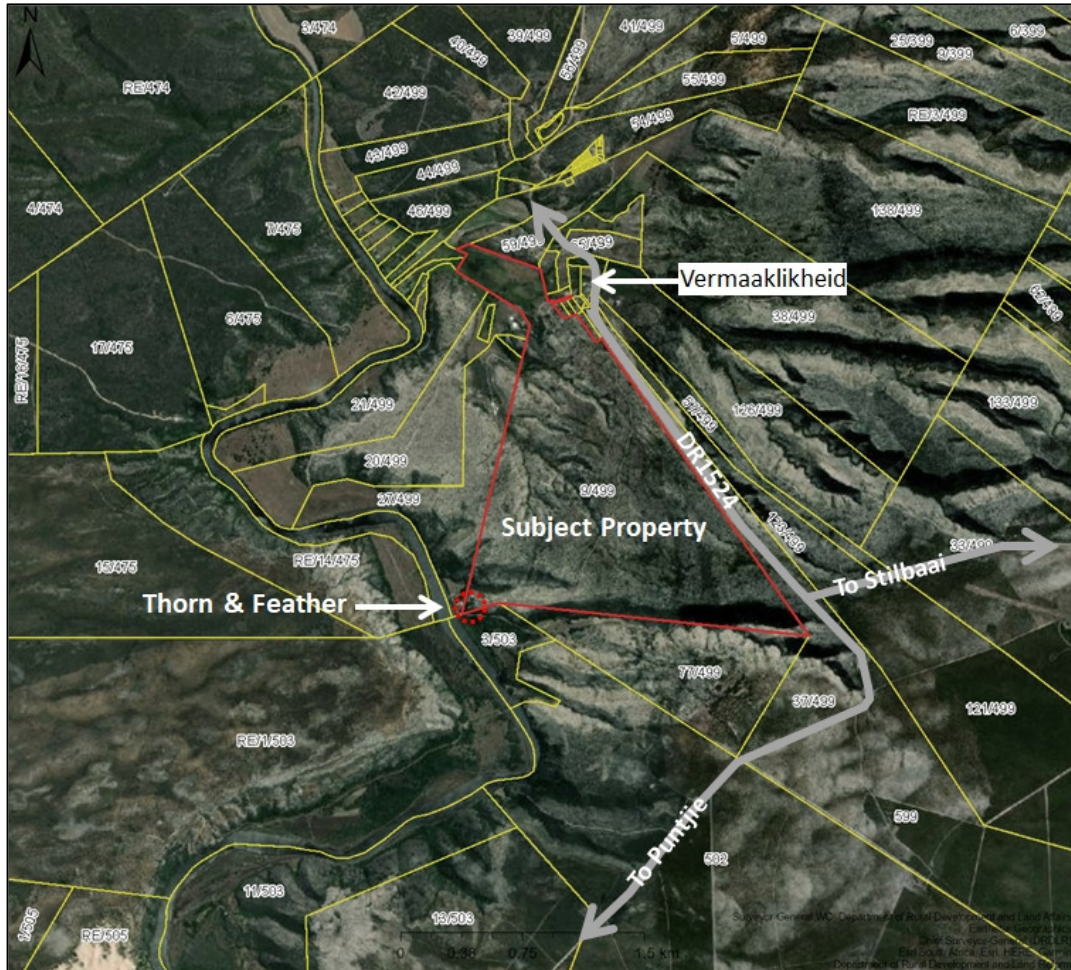


Figure 1: LOCALITY

3. PUBLIC PARTICIPATION

The following surrounding neighbours will be notified of the application; LD-3/503, 77/499, 27/499, 37/499, 25/499, 20/499, 21/499, 61/499, 11/499, 23/499, 79/499, 24/499, 59/499, 138/499, 51/499, 52/499.

The application will also be advertised in the Suid Kaap Forum and circulated to the relevant Municipal and Provincial departments and stakeholders for comment.

4. BUILDING PLANS AND SURVEYED SITE PLAN

Building plans for the residential dwelling was approved in 2013. Certain deviations from these plans resulted during the years when construction took place.

A Land Surveyor was appointed to do a detailed survey of the site to confirm all buildings and the position of the buildings (the survey was done in July 2022). The buildings / structures

that was not approved as part of the 2013 building plans include the following (and is indicated on **Figure 2**):

- A third bedroom;
- An outside shower and toilet; and
- A wooden deck.

The owner will correct these and follow the procedures as required by Building Control and the Planning department to have the building plans approved.

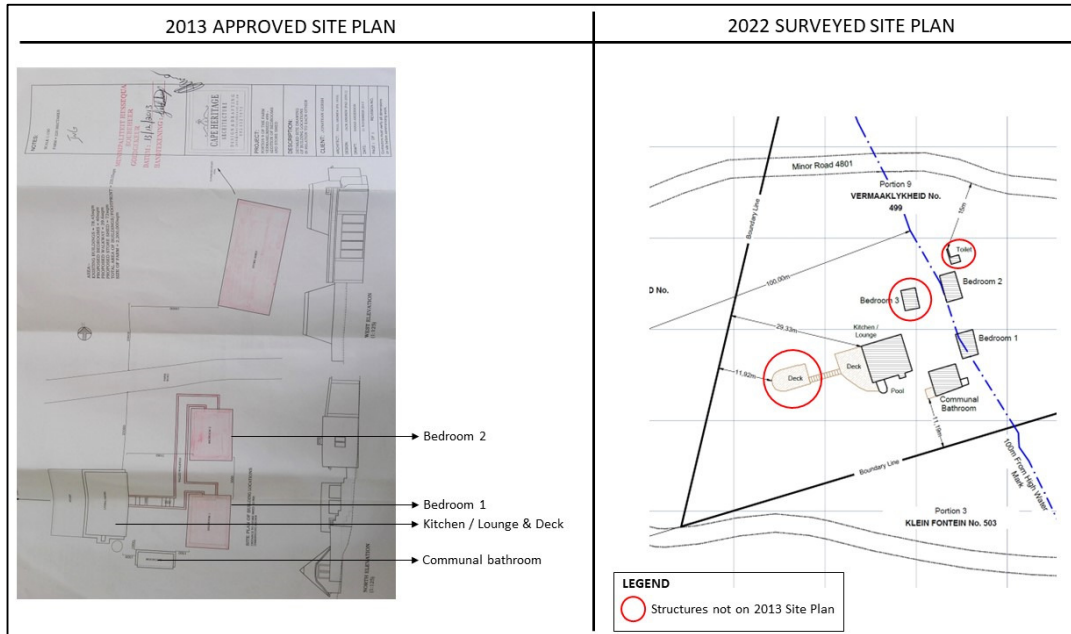


Figure 2: PLAN SHOWING BUILDINGS / STRUCTURES NOT APPROVED ON 2013 SITE PLAN

5. MOTIVATION

The motivation of the application is structured as follow:

- The desirability of the application in terms of the following:
 - Physical characteristics
 - Existing planning in the area
 - Character of the area
 - Potential of the property
 - Locality and accessibility of the property
 - Provision of services
 - Construction phase of the proposal
- Planning Frameworks and Legislation.

5.1 DESIRABILITY

The desirability of the application is outlined in the following sections.

5.1.1 PHYSICAL CHARACTERISTICS

The subject property is 220.1039ha in size and is owned by three shareholders each having a one-third undivided share. *Thorn & Feather* self-catering tourist accommodation, which is the subject of this application, is located on the south-western corner of the farm, adjacent to the Duivenhoks River, on Portion A as indicated on attached **PLAN 2**.

On this portion the owner, Mr. Gersh, initially built a residential dwelling, which he later started to rent out for self-catering tourist accommodation (Refer to **PLAN 4** for the surveyed Site Plan and **Figure 3 – 5** for photos). The architectural style of the accommodation is that of individual stone cottages that is linked together with pathways and was designed as such to get a feeling of independence and privacy but forming a combined “entity”. This design also allowed the buildings to be unobtrusive and integrated with nature and allowing space for additional landscaping between the buildings thus having a lesser visual impact than one larger building would have had. *Thorn & Feather* consist of the following and can accommodate a maximum capacity of 6 adults and 3 children:

- One main building including the kitchen and lounge with two wooden decks and a plunge pool.
- Three separate bedrooms which can each accommodate 2 adults and 1 child.
- One communal bathroom and a separate outside shower and toilet.

Very important to note is that even though the bedrooms and bathroom are separate from the main building, it functions exactly the same as a three bedroom house, in that the property is advertised as a single unit/residence and rented exclusively to one group of guests at a time.

On the opposite side of the access road, is a shed that is used for storage of farm equipment and washing of laundry. This area also includes a carport where vehicles can be parked as no vehicle access is provided to the accommodation, which adds to the exclusivity and peaceful atmosphere of this accommodation.

This portion of the property is situated higher up from the Duivenhoks River and also higher than the surrounding properties to the south and west. This difference in height as well as the established trees and vegetation provides for privacy between the neighbouring buildings and residences. The building line encroachment therefor do not affect the neighbouring properties in terms of privacy.



Figure 3: PHOTOS SHOWING ENTRANCE AND WALKWAYS



Figure 4: PHOTOS SHOWING BUILDINGS

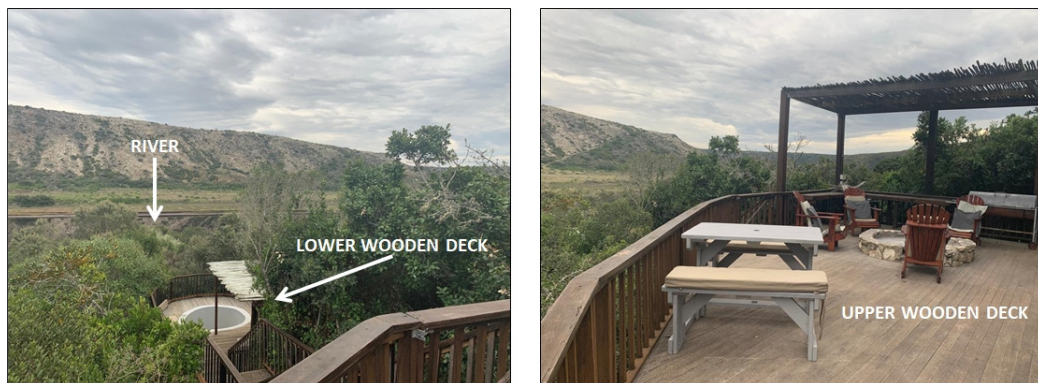


Figure 5: PHOTOS SHOWING WOODEN DECK AREAS

5.1.2 EXISTING PLANNING

Refer to **Section 5.2** of this report.

5.1.3 CHARACTER OF THE AREA

The character of the area is rural and because of the location close to the Duivenhoks River and Vermaaklikheid, which are tourist attractions, there are a number of holiday farms offering tourist accommodation and tourist facilities in the area.

Thorn & Feather self-catering tourist accommodation therefor fits in well with the character of the area and strengthening tourism. Also, the manner in which the accommodation was designed and the materials that was used makes it visually unobtrusive and it blends in with nature. It therefor does not have a negative impact on the rural area.

According to the information on Cape Farm Mapper, the farm does form part of a Critical Biodiversity Area (refer to **Figure 6**). Building plans was however approved prior to construction of the buildings

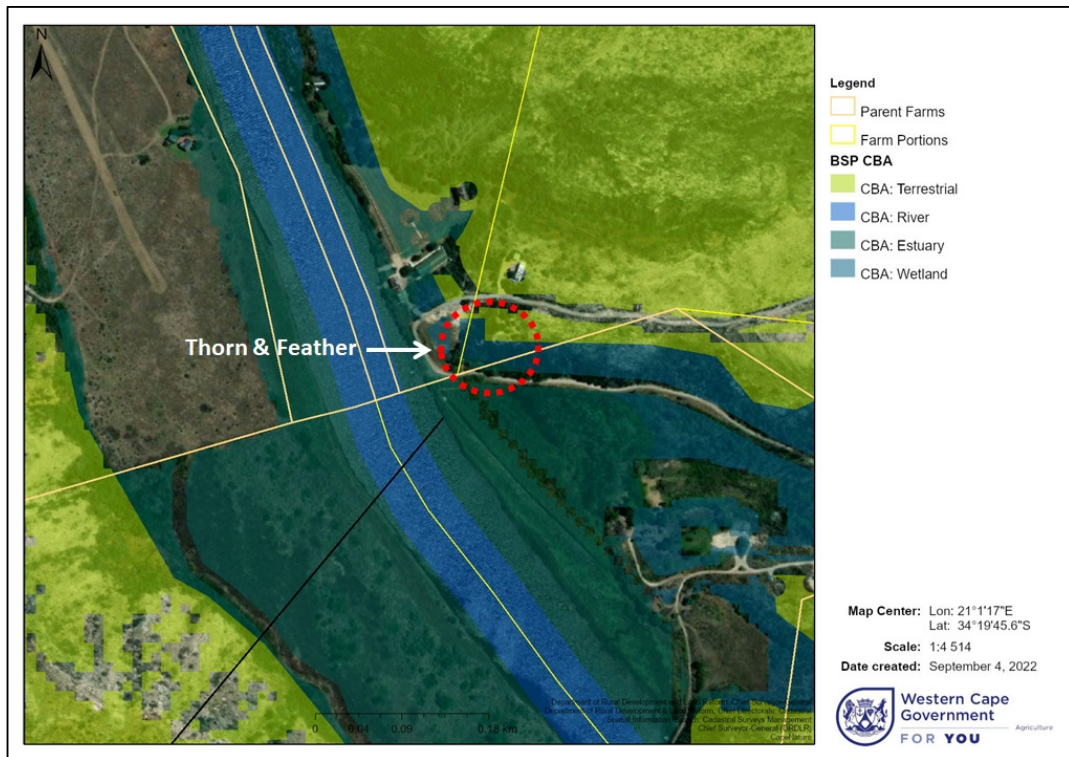


Figure 6: PROPERTY IN RELATION TO CBA

5.1.4 POTENTIAL OF THE PROPERTY

The portion of the farm where *Thorn & Feather* is located, does not have high potential agricultural land, due to the topography. The accommodation therefor does not impact on valuable agricultural resources.

As stated in the previous section, the farm is located in an area that has tourist attractions and the location adjacent to the Duivenhoks River makes *Thorn & Feather* an ideal location for tourist accommodation which adds to the attractiveness of the area and promoting tourism.

Thorn & Feather employs two full-time staff, both single mothers, therefor providing for two families on a permanent basis in a marginalised community where employment is hard to find. In addition to this, the farm has employed a number of people from the local community on an ad-hoc basis for many years now to assist with the eradication of alien plants, perform maintenance of the buildings and alien wood harvesting.

Thorn & Feather therefor has a positive impact on the area and the community.

5.1.5 LOCALITY AND ACCESSIBILITY OF THE PROPERTY

The farm is located between Vermaaklikheid and Stilbaai / Jongensfontein and can be accessed from Divisional Road 1524 (to Riversdale / Stilbaai) via a smaller gravel road (Minor Road 4801) which leads down to the river and to *Thorn & Feather*.

The design of the accommodation was done to have minimal vehicle impact, as there is no direct vehicle access to the accommodation. Vehicles are required to park at a dedicated parking area, under carports, from where luggage must be carried to the accommodation. Only natural gravel footpaths are provided which connects the bedrooms with the communal main building and bathroom. This just shows the careful consideration that was taken to limit the impact on the environment and nature.

The existence of tourist accommodation will have an occasional increase in traffic movements to and from the farm, however it is expected to be low traffic volumes, as the maximum capacity of the accommodation is only 6 adults and 3 children.

5.1.6 PROVISION OF SERVICES

In terms of services:

- Water is supplied by “oog” from farm 500/3, Borain.
- Sewage: All bathrooms are serviced by septic tanks, and washing waste water collected by grey water systems.
- Electricity: Solar (100% off grid)

5.1.7 CONSTRUCTION PHASE OF THE PROPOSAL

The existing roads are sufficient to provide access, no new access roads will be needed.

The buildings are all existing and care was taken to limit vegetation clearance as far as possible.

5.2 PLANNING FRAMEWORKS AND LEGISLATION

5.2.1 HESSEQUA MUNICIPALITY SPATIAL DEVELOPMENT FRAMEWORK, 2013

The Hessequa Municipality Spatial Development Framework (SDF) 2013 (with update in 2017), is the applicable policy document guiding spatial development in the Municipality.

The subject property is a farm located outside of the small town of Vermaaklikheid. The role of Vermaaklikheid according to the SDF is that of a residential and holiday settlement with limited functions (SDF, 2013, p. 189).

The SDF promotes the development of tourism related land uses and accommodation on agricultural land and recognises the economic advantages it holds (SDF, 2013, p. 76).

The existing tourist accommodation, *Thorn & Feather* is in line with Strategy S11 (p.77) as it will assist in stimulating the development of tourism related land uses to provide thrust to the growing tourism industry, but with consideration of the guidelines to protect the rural character.

The tourist accommodation is also in line with Policy Statements B11.1 & B11.2 (p. 77) in that:

- The scale and form are sustainable with the character of the rural area; i.e. *Thorn & Feather* was designed using local materials of which the stone blends in with the natural landscape, the individual buildings was placed as such to be integrated into nature and thus fits in with the rural character.
- The primary goal of the accommodation is to provide a service for tourists and to attract tourists to the farm and to the area.

5.2.2 SPATIAL PLANNING AND LAND USE MANAGEMENT ACT 16 OF 2013 (SPLUMA)

5.2.2.1 DEVELOPMENT PRINCIPLES SET OUT IN CHAPTER 2

The principles for land development set out in SPLUMA stipulates that spatial planning, land development and land use management should be guided by the principles of *spatial justice, spatial sustainability, efficiency, good administration and spatial resilience*.

The table below outlines the principles and indicates how the application is in line with the principles, where relevant and if applicable.

PRINCIPLES	ALIGNMENT OF APPLICATION
<p>(a) The principle of of SPATIAL JUSTICE, whereby –</p> <p>(i) past spatial and other development imbalances must be redressed through improved access to and use of land;</p> <p>(ii) spatial development frameworks and policy at all spheres of government must address the inclusion of persons and areas that were previously excluded, with an emphasis on informal settlements, former homeland areas and areas characterised by widespread poverty and deprivation;</p> <p>(iii) spatial planning mechanisms, including land use schemes, must incorporate provisions that enable redress in access to land by disadvantaged communities and persons;</p>	<p>The principle of Spatial Justice applies as <i>Thorn & Feather</i> provides full time employment for two staff members, both single mothers, from the local community which is a marginalised community with limited access to employment.</p> <p>In addition to regular employment, the farm has employed people from the local community on an ad hoc basis for many years to assist with the eradication of alien plants; perform maintenance of the buildings and alien wood harvesting.</p>

<p>(iv) land use management systems must include all areas of a municipality and specifically include provisions that are flexible and appropriate for the management of disadvantaged areas, informal settlements and former homeland areas;</p> <p>(v) land development procedures must include provisions that accommodate access to secure tenure and the incremental upgrading of informal areas; and</p> <p>(vi) a Municipal Planning Tribunal considering an application before it, may not be impeded or restricted in the exercise of its discretion solely on the ground that the value of land or property is affected by the outcome of the application.</p>	
<p>(b) The principle of SPATIAL SUSTAINABILITY whereby spatial planning and land use management systems must –</p> <p>(i) promote land development that is within the fiscal, institutional and administrative means of the Republic;</p> <p>(ii) ensure that special consideration is given to the protection of prime and unique agricultural land;</p> <p>(iii) uphold consistency of land use measures in accordance with environmental management instruments;</p> <p>(iv) promote and stimulate the effective and equitable functioning of land markets;</p> <p>(v) consider all current and future costs to all parties for the provision of infrastructure and social services in land developments;</p> <p>(vi) promote land development in locations that are sustainable and limit urban sprawl; and</p> <p>(vii) result in communities that area viable.</p>	<p>(i) The proposed development is not dependent on any public or Government funding and due to the location on a farm, providing own services, it will not put any additional financial pressure on the Municipality in terms of infrastructure.</p> <p>(ii) The portion of the farm where <i>Thorn & Feather</i> is located does not have high agricultural potential, to be a sustainable agricultural practice, due to the topography in that specific area and therefore no high potential agricultural land will be lost due to the tourist accommodation.</p> <p>(iii) The farm does form part of a Critical Biodiversity Area, however, building plans were approved prior to construction. And care was taken to limited vegetation clearing as far as possible and to retain the natural state and beauty of the area.</p> <p>(iv) The development of tourist accommodation improves the attractiveness of the farm and therefore increases the value of the land.</p> <p>(v) No use of Municipal infrastructure is required and therefor it will bear no current or future cost to anyone.</p> <p>(vi) The nature of the proposal does not promote urban sprawl as the application is for tourist accommodation on a farm which is in line with the Municipal SDF.</p> <p>(vii) The Tourist accommodation has a positive impact on the area as it will promote tourism, provide employment opportunities and in turn promote economic development.</p>
<p>(c) The principle of EFFICIENCY whereby -</p> <p>(i) Land development optimises the use of existing resources and infrastructure;</p> <p>(ii) decision-making procedures are designed to minimise negative financial, social, economic or environmental impacts; and</p>	<p>(i) The tourist accommodation will optimise the use of existing resources and infrastructure on the farm.</p> <p>(ii) This application, if approved, will have a positive financial, social and economic impact as</p>

(iii) development application procedures are efficient and streamlined and timeframes are adhered to by all parties.	it will promote tourism in the area. (iii) This application is submitted in line with the Municipal Planning By-law requirements and all effort will be made by the Applicant that procedures are efficient, and timeframes are adhered to.
(d) The principle of SPATIAL RESILIENCE , whereby flexibility in spatial plans, policy and land use management systems are accommodated to ensure sustainable livelihoods in communities most likely to suffer the impacts of economic and environmental shocks.	Not directly applicable to this application.
(e) The principle of GOOD ADMINISTRATION , whereby - (i) all spheres of government ensure an integrated approach to land use and land development that is guided by the spatial planning and land use management systems as embodied in this Act; (ii) all government departments must provide their sector inputs and comply with any other prescribed requirements during the preparation or amendment of spatial development frameworks; (iii) the requirements of any law relating to land development and land use are met timeously; (iv) the preparation and amendment of spatial plans, policies, land use schemes as well as procedures for development applications, include transparent processes of public participation that afford all parties the opportunity to provide inputs on matters affecting them; and (v) policies, legislation and procedures must be clearly set in order to inform and empower members of the public.	(i) & (ii) The application is submitted to the Municipality in terms of the Municipal Planning Bylaw and will be circulated to the relevant sector departments for input and comments, thereby ensuring an integrated inter-governmental approach to land use planning. The proposal is also in line with the Spatial Development Framework in that it will promote tourism in the area and in turn economic development. (iii) The relevant laws in this instance include the Municipal SDF, SPLUMA, LUPA and Hessequa Municipal Planning Bylaw which has been addressed in this application. (iv) The application will go through a public participation process as prescribed by the Municipal Planning Bylaw. (v) The application process will be dealt with in terms of the relevant policies and legislation.

5.2.2.2 SECTION 42

Section 42 of SPLUMA sets out the factors which needs to be taken into consideration when a decision is taken on an application.

The table below outlines these factors and the alignment of the application with these factors:

DECIDING AN APPLICATION	ALIGNMENT OF APPLICATION
42. (1) In considering and deciding an application a Municipal Planning Tribunal must -	
(a) Be guided by the development principles set out in Chapter 2	This has been addressed in Section 5.2.2.1 of this report.
(b) Make a decision which is consistent with norms and standards, measures designed to protect and promote the sustainable use of agricultural land, national and provincial government policies and the municipal spatial	The portion of the farm being used for tourist accommodation does not have high agricultural potential. The proposal is also in line with the Spatial Development

development framework.	Framework in that it will promote tourism in the area and in turn economic development.
(c) Take into account - (i) The public interest; (ii) The constitutional transformation imperatives and the related duties of the State; (iii) The facts and circumstances relevant to the application; (iv) The respective rights and obligations of all those affected; (v) The state and impact of engineering services, social infrastructure and open space requirements; and (vi) Any factors that may be prescribed, including timeframes for making decisions.	(i) The surrounding property owners and stakeholders will be notified of the application and afforded an opportunity to provide comment and input, ensuring that the public interest will be considered. (ii) This is not applicable due to the small scale of this application. (iii) The facts and circumstances of this application is outlined in Section 3 and 5 of this report. (iv) The application will not have a negative effect on any rights of affected persons. (v) The application does not have a negative impact on engineering services, social infrastructure or open space requirements. (vi) The applicant will adhere to the timeframes set by the Municipal Planning Bylaw.

6. SUMMARY

Taking the above factors and motivation into consideration, the applicant is of the opinion that the tourist accommodation has a positive impact on the area. The position of the buildings, encroaching the farm boundary building lines does not negatively impact the neighbouring properties in terms of privacy, due to the topography and existing vegetation. It is therefore kindly requested that the following application be approved:

- **Consent Use** to allow Tourist accommodation on the subject property, as per surveyed Site Development Plan attached as **PLAN 4**, in terms of Section 15(2)(o) of the Hessequa Municipal Planning By-law 2015.
- **Permanent Departure** of the southern boundary building line from 30m to 11.19m, to allow for the existing building, in terms of Section 15(2)(b) of the Hessequa Municipal Planning By-law 2015.
- **Permanent Departure** of the western boundary building line from 30m to 11.92m, to allow for the existing wooden deck, in terms of Section 15(2)(b) of the Hessequa Municipal Planning By-law 2015.

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